



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 00 002 50502 Office: Vermont Service Center

Date: JUN 13 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a small manufacturing company. It seeks classification of the beneficiary as a mechanical and electrical technician trainee for a period of seven months. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation.

On appeal, the petitioner states that it has designed an 85% classroom-environment training course, with the remaining 15% hands-on training consisting of 60% productive work and 40% non-productive work.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--* (A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

- (2) Sets forth the proportion of time that will be devoted to productive employment;
 - (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
 - (4) Describes the career abroad for which the training will prepare the alien;
 - (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
 - (6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.
- (iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:
- (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
 - (B) Is incompatible with the nature of the petitioner's business or enterprise;
 - (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
 - (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
 - (E) Will result in productive employment beyond that which is incidental and necessary to the training;
 - (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
 - (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
 - (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The training program does not have an hourly time schedule, it does not explain the objectives the program expects to obtain and the means by which the instructors will be evaluating the trainee.

The petitioner states that the training responsibilities will be divided between four of its engineers, one wireman and one machine assembler. The petitioner also states it will hire an electronic technician to compensate for the lost production caused by the training effort. The training program requires 45 weeks for completion. The petitioner has not explained how its engineers, wireman and machine assembler will be responsible for training the beneficiary five days a week, eight hours per day and still be able to perform their duties at the company.

Beyond the decision of the director, this case cannot be approved for other reasons. The petitioner did not establish that the beneficiary will not engage in productive employment. Currently, the petitioner's training program has been divided into approximately 60% productive work and 40% non-productive work. The total productive on-the-job training will consist of 162 hours and total non-productive on-the-job training will consist of 108 hours. The petitioner states that the beneficiary's training will include working in our production and service departments, assembling electrical and mechanical components, integrating systems, troubleshooting system startups and assisting customers with service problems. Prior to the filing of the appeal, the petitioner had stated that "all training will be productive work. Our company is too small and competitive to have anyone doing non-productive work."

Further, with the majority of the training being on-the-job, the petitioner has not shown that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

The petitioner does not have the physical premises and enough sufficiently trained manpower to provide the training specified. The petitioner states that it does not have formal classroom facilities and that it will be using its conference room as a classroom. The petitioner also states that it does not have teachers, trainers or the resources to devote employees to this task. As stated previously, the training responsibilities will be divided between four of its engineers, one wireman and one machine assembler. The petitioner states that it has never trained an outside service person in the past and that it will be providing on-the-job training. The petitioner states further that the beneficiary will learn how to service its equipment by building, testing, fixing and installing it.

The petition indicates that the beneficiary already has skills related to the training. The petitioner states that the beneficiary completed some basic electronic courses at a vocational school in Italy. Absent a detailed description of the beneficiary's prior experience, the Service must question whether the beneficiary already has substantial training and expertise in the proposed field of training. Moreover, no evidence has been presented that such training does not exist in the beneficiary's home country.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.